

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8716 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAKESH ALIAS LOTIYO

HARMANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8716 of 2004
MS SUBHADRA G PATEL for Petitioner No. 1
MS HB PUNANI, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Subhadra Patel for the petitioner detenu. By this petition under Article 226

read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 12.04.2004 passed by the District Magistrate, Kheda at Nadiad, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that for recording the subjective satisfaction, the detaining authority - District Magistrate Kheda at Nadiad has considered the aspect of registration of 3 criminal cases punishable under the provisions of the Bombay Prohibition Act, registered with between 24.03.2002 and 11.01.2004. The first offence was registered on 24.03.2002 and the second offence was registered on 10.06.2003 i.e. after a lapse of about 1 year and 3 months. Both the offences were registered with Nadiad Pro. Police Station. The third offence registered against the detenu is on 11.01.2004 at Anand Pro. Police Station i.e. after the lapse of about 7 months from the date of registration of the second offence. He was arrested on that very day i.e. on 11.01.2004. However, the impugned order of detention came to be passed on 12.04.2004 which was executed on 21.05.2004. In this set of circumstances, ld. counsel Ms. Patel has submitted that on this sole ground of delay in passing the order of detention, the impugned order of detention requires to be quashed and set aside.

3. Ms. HB Punani, ld. counsel appearing for the State has submitted that though the impugned order of detention was passed on 12.04.2004, the same could be executed only on 21.05.2004 because the detenu was absconding after obtaining bail from the competent court and, therefore, the order of detention should not be quashed as because of the conduct of the detenu, order of detention could not be executed.

4. Having considered the totality emerging from the record and time gap between the last case registered and the order of detention, it would be difficult for the Court to accept that the activities of the petitioner detenu were prejudicial to the maintenance of public order, especially in absence of any other evidence in the nature of statements of independent witnesses. As is disclosed from the grounds of detention, there is a delay of about 3 months in passing the order of detention. This delay ought to have been explained reasonably by the

other side by furnishing details. It is also pertinent to note that no other record other than the papers of chargesheet of all the seven cases were placed before the detaining authority. It was also possible for the sponsoring authority to place relevant papers before the detaining authority at the earliest if really preventive measures were required to be taken immediately. The Court is satisfied with that there is no explanation much less reasonable explanation in absence of any affidavit by the ld. District Magistrate for not passing the order of detention in couple of hours or days after receipt of the papers from sponsoring machinery. Unexplained delay of about 3 months by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, on this ground alone, petition requires to be allowed.

4. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 12.04.2004 passed by the District Magistrate, Kheda at Nadiad is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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